



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	03/26/04	Bill No:	SB 1532
Tax:	Property	Author:	Aanestad
Board Position:		Related Bills:	

BILL SUMMARY

This bill would declare that certain fish screens are personal property and create an exemption for them from property tax.

Summary of Amendments

The amendments to this bill from the previous analysis require that certain fish screens be classified as personal property and thus become exempt from property taxation under the provisions of this bill.

Current Law

Article XIII, Section 2 of the California Constitution authorizes the Legislature to classify personal property for differential taxation or for exemption by means of a statute approved by a 2/3 vote of the membership of each house.

Currently, there are no special assessment provisions or exemptions for fish screens.

Proposed Law

This bill would add Section 242 to the Revenue and Taxation Code to exempt from property taxation a “qualified fish screen.” A “qualified fish screen” is defined to mean a fish screen, as described in Chapter 3 (commencing with Section 5900) of Part 1 of Division 6 of the Fish and Game Code, that is installed or intended to be installed on a conduit, as defined in Section 5900 of the Fish and Game Code, with a maximum flow capacity of 100 cubic feet per second or less of water.

This bill would exclude from the definition of a “qualified fish screen” a fish screen as described in Section 5987 of the Fish and Game Code, which is a fish screen installed by a person engaged in producing, generating, transmitting, delivering, or furnishing electricity for light, heat or power.

With respect to classification of qualified fish screens, this bill would state that the Legislature finds and declares that a qualified fish screen is personal property for purposes of ad valorem property taxation because a fish screen is not intended to be permanently affixed or attached to, permanently imbedded in, or permanently resting upon, land.

In General

Business Personal Property. Personal property used in a trade or business is generally taxable, and its cost must be reported annually to the assessor on the business property statement as provided in Revenue and Taxation Code Section 441. Personal property is not subject to the valuation increase limitations of Proposition 13. It is valued each lien date at current fair market value.

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Generally, the valuation of personal property is based on the acquisition cost of the property. The acquisition cost is multiplied by a price index, an inflation trending factor based on the year of acquisition, to provide an estimate of its reproduction cost new. The reproduction cost new is then multiplied by a depreciation index, also called percent good tables, to provide an estimate of the depreciated reproduction cost of the property (reproduction cost new less depreciation). The reproduction cost new less depreciation value becomes the taxable value of the property for the fiscal year.

For the most part, only businesses are subject to the property taxation of their business personal property holdings. With the exception of boats and planes, personal property owned by individuals is exempt from personal property taxes.

In general, personal property used in businesses is subject to property tax. The only exemptions for personal property used in businesses is an exemption for business inventories (Section 219) and an exemption for the first \$50,000 of employee-owned hand tools (Section 241). Detailed information on the assessment of business personal property is available in Assessors' Handbook Section 504 "Assessment of Personal Property and Fixtures." <http://www.boe.ca.gov/proptaxes/ahcont.htm>

Real Property. Revenue and Taxation Code Section 104 provides that "real estate" or "real property" includes improvements. Revenue and Taxation Code Section 105 defines "improvements" as including "[a]ll buildings, structures, fixtures, and fences erected on or affixed to the land." Civil Code Section 660 provides that a "thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws; ..." Revenue and Taxation Code Section 106 provides that "[p]ersonal property" includes all property except real estate."

Fixtures. A fixture is real property which while at the time of purchase was considered personal property, but changed its character by attachment to real property. For example, a wood stove would be considered personal property at the time of purchase but once it is installed it becomes a part of the home and an item of real property. A three part test is used to determine whether an item is a fixture: (1) the manner of annexation or attachment of the property; (2) the degree to which the item is customized to a particular location; and (3) the intention that it remain indefinitely annexed or attached. The Board has promulgated Property Tax Rule 122.5 to provide direction on the classification of fixtures. <http://www.boe.ca.gov/proptaxes/ptrules.htm> Often, the classification of property as either a fixture (real property) or personal property depends on a factual determination and is an area of frequent dispute between an assessor and a taxpayer.

Background

Fish Screens. Fish Screens are required on any new or modified water diversion as required by the California Fish and Game Code. Water diversions are also screened to comply with the Federal Endangered Species Act giving the diverter protection from incidental take. Both the National Marine Fisheries Service (NMFS) and the California Department of Fish and Game (DFG) have established criteria for intake screens in California. These criteria address the needs of primarily juvenile anadromous salmon

and steelhead trout (both are listed as endangered species). However, they are generally protective of most fish over 20 mm in length.

Related Bills. Other bills before the Legislature to exclude as new construction for purposes of property taxation or exempt from property taxation the following property required by state or federal statutes or regulations are noted below.

- SB 933 (Poochigian, Chapter 352, Statutes 1999) was enacted to provide that when an underground storage tank must be improved, upgraded, or replaced to comply with federal, state, and local regulations on such tanks, the tank work shall not be considered new construction, and shall be considered to have been performed for the purpose of “normal maintenance and repair.”
- ACA 34 (Poochigian, 1997-98) would have placed a constitutional amendment before the voters to exclude from new construction the improvement of real property through the installation, construction, or modification of machinery and equipment necessary to comply with federal, state or local environmental law. This measure failed.
- SB 657 (Maddy, 1995-96) would have excluded from the terms “newly constructed” and “new construction” property used, constructed, acquired, or installed wholly or partly to meet or exceed the laws, rules, or regulations administered by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control or reduction of air, water, or land pollution. These provisions were amended out of the bill prior to it being chaptered.
- AB 915 (Cunneen, 1995-96) would have excluded from the terms “newly constructed” and “new construction” property used, constructed, acquired, or installed for the purpose of meeting or exceeding the laws, rules, or regulations administered by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control or reduction of air, water, or land pollution that is generated onsite by the industrial or commercial activities of the facility.
- AB 1070 (Ferguson, 1993-94) would have exempted from property tax any machinery or equipment used in a trade or business and acquired to reduce air pollution for purposes of satisfying government requirements.
- AB 1099 (Conroy, 1993-94) would have provided preferential assessment for replaced or upgraded equipment required by federal or state laws or regulations relating to environmental protection, public safety, or access by disabled persons.
- AB 3318 and AB 1168 (Takasugi, 1993-94) would have exempted personal property that is used in oil spill operations.

COMMENTS:

1. **Sponsor and Purpose.** This bill is sponsored by Family Water Alliance to provide a property tax exemption for fish screens. As to its purpose, this bill makes the following declarations.

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- When the state requires certain actions to be taken by private property owners for environmental preservation or conservation efforts, it is incumbent upon the state to ensure that those actions do not have a negative financial impact upon the property owners.
 - The state has already acknowledged its good faith in working with private property owners in certain circumstances, such as providing a financial incentive to further utilize solar panels.
 - The requirement to install fish screens to protect fish species is an equally environmentally responsible activity.
 - However, the installation of the fish screens may increase property's taxable value.
 - By allowing a property tax exemption for the value of certain fish screens, state and local government will further assist in establishing a more responsive relationship with private property owners in working to further protect the environment.
2. **March 26 Amendments.** As introduced, this bill would have exempted from property tax qualifying fish screens that were classified as personal property. Fish screens classified as real property (i.e., a fixture or a structure) would continue to be taxable. This bill would make a legislative declaration that certain fish screens are personal property and thus prohibit assessors from classifying them as real property.
3. **The Taxation Of Personal Property Is Discretionary With The Legislature.** Section 2 of Article XIII of the California Constitution provides that the Legislature, two-thirds of the membership in each house concurring, may exempt any personal property from taxation. In contrast, real property exemptions require a constitutional amendment. Proposed Section 242 creates such an exemption for fish screens that are classified as personal property.
4. **Currently There Are No Special Personal Property Exemptions For Items That Are Required To Be Purchased Because of a State Or Federal Law.** As noted previously, other bills have been before the Legislature, but none have been enacted, with the exception of the new construction exclusion for underground storage tanks that were required to be replaced or reinforced. That legislation differed in that it related to the replacement of property already subject to tax and merely ensured that the tank replacement would not result in an increase in the base year value of the property.
5. **Should Fulfilling A Governmental Regulation Result in Higher Property Taxes?** Proponents reason that it is unfair that property owners must pay more property taxes as a consequence of making improvements to their property as required by law. The property owner is financially impacted twice: first, by the initial outlay to pay for the improvements and, second, by the annual incremental cost because the assessed value of the property has increased.
6. **Classification decisions are made by the assessor and subject to review by the assessment appeals board.** A fixture is an item of personal property that when affixed to the real property shifts in classification from personal property to real property. Classification is an area of frequent dispute in instances where the classification results in different tax treatment. This bill would require that certain fish screens be classified as personal property. The line of demarcation between a

real property fixture and personal property is not always clear and often requires the exercise of judgment.

7. **It appears that to date fish screens have been classified as real property rather than personal property.** To exempt fish screens that are classified as real property a companion constitutional amendment would be necessary. This bill would attempt to circumvent this issue via a legislative declaration that such items are to be classified as personal property.
8. **A Legislative Declaration of Personal Property Classification Sets A Precedent.** This measure would set a precedent that many other businesses would likely seek to (1) require a personal property classification of property they are seeking an exemption upon; and (2) authorize exemption under Section 2 of Article XIII of the California Constitution.
9. **Claiming Procedures Necessary.** To administer this exemption a claim for the exemption should be submitted to the assessor.
10. **Chaptering Out Potential.** Assembly Bill 1789 (Corbett) also proposes to add a Section 242 to the Revenue and Taxation Code.

COST ESTIMATE

The Board would incur insignificant costs (less than \$10,000) in informing and advising county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

The California Constitution authorizes the legislature to classify personal property for differential taxation or for exemption by means of a statute approved by two-third vote of the membership of each house. Pursuant to this constitutional authority, this bill would exempt from ad valorem property taxation fish screens that are classified as personal property.

Fish Screens are required on any new or modified water diversion as required by the California Fish and Game Code. Water diversions are also screened to comply with the Federal Endangered Species Act giving the diverter protection from incidental take.

The cost of fish screens varies depending upon the size of the diversion (volume of water intake measured by cubic feet per second {cfs} of water flow) and the complexity of the fish screening system. For example, the Family Water Alliance provided information on recently completed fish screen projects along the Sacramento River. These projects ranged from a low of \$73,000 for a 4.56 cfs fish screen to \$520,000 for a 80 cfs fish screen.

There are 3 general categories for estimating fish screening cost. Small pumped diversions of 15 cfs or less generally cost \$2,000 per cfs. Medium-sized diversions from 15 cfs to 250 cfs generally can cost in excess of \$5,000 per cfs. The large more complex diversions of over 250-cfs can exceed \$10,000 per cfs.

We gathered cost information on fish screens ranging from small to medium size screening projects, of less than 100 cfs, provided by the Family Water Alliance, a non-profit organization representing farmers, private property rights, and rural communities. To date, the Family Water Alliance has been project manager over 21 fish screening

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projects along the Sacramento River, all of these fish screening projects are less than 100 cfs. Eighteen of these projects have been completed and three are currently under construction. The 18 completed projects have a value of \$2.6 million, or \$144,000 for each screen, (\$2.6 million divided by 18). The size of these fish screens average approximately 23 cfs each, at a cost of \$6,260 per cfs (\$144,000 divided by 23).

Within the next 10 years a substantial number of fish screening projects may be necessary to comply with State and Federal laws. It is estimated that as many as 2600 water diversion, all of which are estimated to be less than 100 cfs, along the Sacramento and San Joaquin rivers and in the Delta region will require screening. This could increase the assessed value of these properties that could be subject to this bill by as much as \$374.4 million (2600 x \$144,000), or \$3.74 million in property tax.

Revenue Summary

The cost of the 18 completed fish screening projects and the 3 projects that are nearly completed along the Sacramento River is approximately \$3 million (21 x \$144,000). If all 21 of these fish screens were classified as personal property, and if all of the costs were added to the assessed value of the property, then the revenue impact of this bill would be \$30,000 (\$3 million x 1%) in property tax.

However, as other water diversions are screened over the next 10 years, the potential increase in assessed value would be \$374.4 million if all of the costs were added. The revenue impact of exempting all fish screens would be \$3.74 million (\$374.4 million x 1%) in property tax.

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